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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/843,614 | 04/25/2001 | Bryan C. Gebhardt | 19502-04564 | 7671 |
| 21186 | 7590 | 10/04/2005 | EXAMINER | |
| SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH 1600 TCF TOWER 121 SOUTH EIGHT STREET MINNEAPOLIS, MN 55402 | | | BENGZON, GREG C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2144 | |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/843,614

Applicant(s)

GEBHARDT ET AL.

Examiner

Greg Bengzon

Art Unit

2144

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 August 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

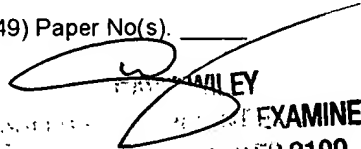
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-41.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheets.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


GREGORY BENGZON
EXAMINER
TECHNOLOGY CENTER 2100

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Response to Arguments

Applicant's arguments filed 08/04/2005 have been fully considered but they are not persuasive.

For clarification purposes, the Examiner notes that since no agreement was reached during said interview on or about July 27, 2005 there was no Interview Summary generated for said interview.

The Applicant presents the following argument(s) [*in italics*]:

Howe describes a system and method for switching from one channel to another, e.g., from a program channel being viewed to a different interactive channel, not switching between two interactive applications.

The Examiner respectfully disagrees with the Applicant. While Howe described the embodiments of the invention in terms of switching between analog programs and interactive applications, Howe also disclosed the intent to switch and means to switch between interactive applications. Howe disclosed the availability of multiple interactive applications from an interactive server (Howe - Column 3 Lines 10 – 15) wherein interactive server fulfills requests for interactive content from different content providers. (Howe - Column 4 Lines 10-15). Howe disclosed the means for switching between interactive applications in the form of a screen image 'icon' (Column 4 - Lines 35-45, Column 26 Lines 45-50) in combination with an application-specific interactive callback address ICA and other non-standard or customized button information. While Howe

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disclosed sending said 'icon' in an analog embodiment via VBI (vertical blanking signal) Howe also disclosed sending said 'icon' in an out-of-band signal (Howe – Column 4 Lines 25-30) thus making said icon available for digital (i.e. 'interactive') applications viewed via interactive channels. The Examiner notes that the screen image 'icon' itself may be considered an interactive application that the subscribers use to set the STB into an interactive state (Column 24 Lines 10-15) and further enables subscribers to switch to another interactive application. (Column 22 Lines 38-40) The STB remains in an interactive state until the subscriber terminates the interactive session. While in an interactive state the STB communicates via IP Protocol (Column 22 Lines 45-50) and is therefore able to receive subscriber input and relay said input to the interactive application selected.

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